

EMPLOYERS' UNEMPLOYMENT COMPENSATION COUNCIL
A Michigan Non-Profit Corporation

Executive Director
MARLENE D. JOBE

Legal Counsel
FRITZ DAMM
Clark Hill P.L.C.

**Testimony before the House Committee on
Employment Relations**

SBs 171 – 174

Employment Security – SUTA Dumping

Comments presented by:

Marlene D. Jobe

Executive Director

Employers' Unemployment Compensation Council

March 1, 2005

Chair
JOHN DAVIDSON
John P. Davidson & Associates
Rochester

Vice-Chair
NEIL MacVICAR
Michigan Health & Hospital
Association, Lansing

Secretary
BEVERLY MATSON
MASCO Corporation
Taylor

Treasurer
JAMES D. NAIDA
James D. Naida, P.C.
Bingham Farms

Directors
ALBERT CALILLE
SBC
Detroit

CHARLES COAKER
TWB Company, LLC
Monroe

JAMES COMMET
ThyssenKrupp Budd Company
Troy

THOMAS DUNGY
Detroit Edison Company
Detroit

MATTHEW HARVILL
Kelly Services
Troy

JOHN PACKER
Packer & Associates
Novi

DEAN SHACKELFORD
Oakland County
Pontiac

LaWANDA R. WHITE
Delphi Corporation
Troy

SEBASTIAN WADE
Detroit Regional Chamber
Detroit

KENNETH WERBYLO
Ford Motor Company
Dearborn

BRIAN ZIELINSKI
General Motors Corporation
Detroit

DAVID S. ZURVALEC
Michigan Manufacturers
Association, Lansing

Good afternoon Mr. Chairman, and members of the Committee. My name is Marlene Jobe, and I am the executive director of the Employers' Unemployment Compensation Council (EUCC).

The EUCC is a statewide, non-profit business organization established in 1947, and is devoted exclusively to representing employer interests to insure an equitable and competitive unemployment insurance system in Michigan.

One of the most important duties of the EUCC is the study and dissemination of information regarding Michigan's unemployment insurance law as it relates to employers' costs. I would like to thank the Chairman, and his Committee for having this hearing today. Michigan unemployment law is very complicated and it is refreshing to see that you are interested in learning all you can about this complicated UI tax issue in order to enact sound law.

As you know, last August, Congress passed legislation called the "SUTA Dumping Prevention Act of 2004," and all states must enact legislation to remain in conformity with the federal law, or lose FUTA credit. All sides here today agree that state SUTA dumping laws need to be passed, but disagree on how far the law should go. The US Department of Labor interprets the law passed by Congress to mean that states must have a system to detect and prevent SUTA dumping. It is our understanding of SBs 171-174 simply "curb" SUTA dumping instead of "preventing" or "stopping" the practice.

The EUCC is very disheartened that the package before the committee today does not address one of the most significant areas where employers can SUTA dump. Over the past decade, employee leasing has become a popular way in which employers can reduce their business taxes including unemployment taxes. Employee Leasing Companies (ELCs) also known as Professional Employer Organizations (PEOs) take on the client employees and lease them back to the company. For unemployment tax purposes, if there is less than a 75% asset transfer when the client employees are transferred to the PEO, there will not be a transfer of experience unless the PEO requests the partial transfer. SB 173 specifically continues to allow employers that do

not have substantially common ownership, management, or control to continue to SUTA dump.

I have attached an example of the amount of dollars involved when an employer with a high unemployment tax rate transfers its employees to an employer with a low rate. The dollars involved can be substantial. This is a direct hit on our experience rated system. The cost of repayment of the previously paid out benefits will fall on the employers who do not SUTA dump.

I have attached a couple of other interesting items I found on line. One being a CPA that has written an article advertising that employers should consider using a PEO if their unemployment tax rate is higher than 2.7%.

The Senate amended the original language to stop SUTA dumping by reimbursing employers by requiring them to repay any negative balances before switching from contributing to reimbursing. There is no such provision in this package to address the issue of an employer that is dumping a negative balance and moving to a PEO. Currently, after eight quarters without payroll, an employer can leave the PEO and start with a new employer rate, leaving behind their previous experience to be paid by others. This loophole needs to be closed.

One thing we know for certain is that the state UI Trust Fund is rapidly trending downward. In 2004, Michigan paid out almost \$1.8 billion in benefits, and collected just over \$1.3 billion in taxes. I agree with others that have indicated that the best way to keep the UI trust fund from going broke is to increase employment in Michigan. New jobs are not created overnight, and in the meantime the trust fund continues to shrink, and at the end of 2004 was at 10 year low of \$649 million. How inviting will it be to an employer that may want to locate here if the state UI trust fund is broke, and additional taxes will be needed to repay federal loans.

In summary, I am here today to ask that this committee consider an amendment to this package that not only "curbs" the practice of SUTA dumping but stops it.

Thank you for your consideration. I will answer any questions you may have.

PEO No Common Ownership (This transfer is for any business not just PEO's)

PEO



Client

50 ees

2.0% Rate

$$\$9000 \times .02 = \$180$$

$$\$180 \times 50 = \$9000$$

$$\$9000 \times 5 = \$45,000$$

10.3% Rate

$$\$9000 \times 10.3 = \$927$$

$$\$927 \times 50 = \$46,350$$

$$\$810 \times 50 = \$40,500$$

$$\$40,500 \times 4 = \$162,000$$

$$\$162,000 + \$46,350 = \$208,350$$

$$\begin{array}{r} \$45,000 \\ -\$208,350 \\ \hline \$163,350 \end{array}$$

Once the client employees are blended into the PEO, Section 22B would apply for any subsequent transfers within the PEO because there would then be common ownership.

Under the draft language, how is the difference accounted for? Who makes up for the shortfall?

Would this be SUTA Dumping per the definition in 22B(4)(D)?

Payroll transfer is less than 75% of assets. PEO elects against a partial transfer. No experience transfers to the PEO.

If Client remained the employer and did not transfer the payroll to the PEO, the rate would remain at +/- 9% for 5 years even if no other benefits were charged to the account.

What rate should the Client get if they leave the PEO umbrella?

How should that rate be determined?

Services, enhance your professional image, increase traffic to your website or cross-sell products and services, then Message on Hold is just what your business needs!



Partnering with Omega saves you money and with no start-up costs, your savings will be immediate! Omega Solutions is a Professional Employer Organization (PEO) that has access to markets that allow you to significantly reduce your costs for worker's compensation insurance, state unemployment tax, group medical insurance, and possibly Single Business Tax as well as other costs of administration.

Sagemark ConsultingSM

A member of Lincoln Financial Group®

Let Sagemark Consulting work with you to develop an objective comprehensive plan specifically tailored to help meet your financial needs. With over 25 years experience with family held, and closely held businesses, we specialize in Estate Planning, Business Succession Planning, Fringe Benefits, Retirement and Investment Planning. Sagemark Consulting can help you implement the best strategies to turn your financial goals to reality.



**Blue Cross
Blue Shield**
of Michigan

A nonprofit corporation and independent licensee
of the Blue Cross and Blue Shield Association

MGIA members will now have the ability to access the entire menu of BCBSM group programs through our new partnership with Michigan Dental Association's (MDA) subsidiary MDA Insurance. Take advantage of MDA Insurance's 18 years of experience, specializing in group Medical Coverage programs for Michigan's small businesses. With a

Unfortunately, language used by the Court of Appeals in *Ostroth* in reaching its Opinion may have broadened the impact of its Decision beyond the facts of its case. The Court did not specifically limit the application of 5839 to the damages set forth in the statute, (those "arising out of a defective and unsafe condition of an improvement to real property") but rather, stated in its Opinion that "Section 5839(1) applies to all negligent actions against architects, contractors and engineers."

Whether other courts will use this language to

broaden the application of 600.5839(1) to suits which do not arise from a defective condition is yet to be seen.

A Motion for Leave to Appeal the *Ostroth* Decision to the Michigan Supreme Court was filed on August 19, 2004. We will monitor the case and keep you advised of its outcome.

Michael J. Roberts can be reached directly at 616-458-1212 or mroberts@shrr.com.

EMPLOYEE LEASING COMPANIES: WHAT ARE THEY AND ARE THEY RIGHT FOR YOU?

By: Patricia T. Foster, CPA, MST, Manager of State and Local Taxation at Beene Garter LLP

Is your Michigan Single Business Tax (SBT) liability at least \$25,000 per year? Is your SBT compensation addback at least \$1.1 million per year? Is your Michigan unemployment experience rate at least 2.7%?

If you answered yes to these questions, then an Employee Leasing Company (ELC) may be the right fit for you.

An ELC is a separate legal entity owned by a trusted non-related business associate. Your current employees become employees of the new ELC, which then leases them back to you. Your employees retain the same benefits as they had before the change; the only noticeable difference to them should be the name of the employer on their paycheck. You still retain direction and control of the employees, along with the ability to hire and fire in collaboration with the ELC.

This is a legal tax savings technique that is fully disclosed to all governmental units at

implementation. It is not a tax shelter. The state of Michigan is aware of the use of Employee Leasing Companies and has issued guidance regarding their implementation and tax consequences.

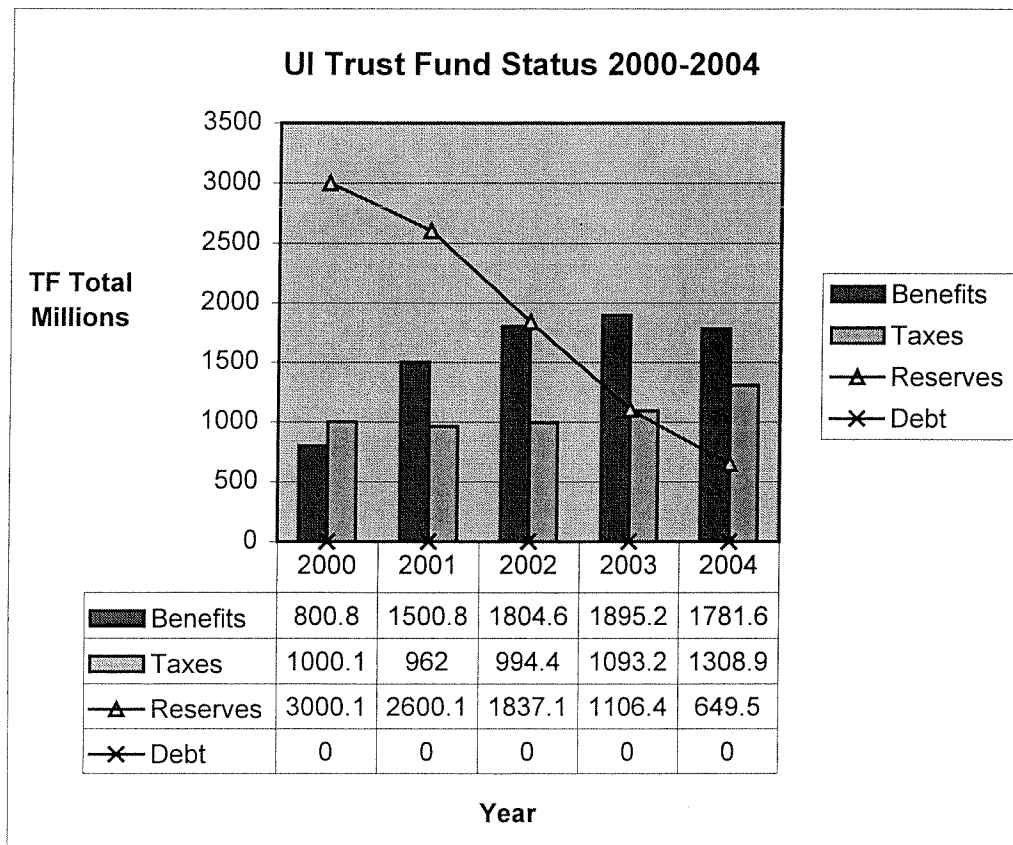
Although ELCs are fairly simple to manage once they are up and running, it is extremely important to structure them carefully so that they accomplish your objectives with minimum risk. Numerous steps must be followed to properly structure an ELC. It is important to work with both a CPA firm and a law firm experienced in the implementation of ELCs.

The best time to implement an ELC is on January 1 regardless of your company's year-end. Planning should begin well before then in order to have time to properly complete the setup process.

For an analysis of potential savings, please contact Patricia T. Foster at Beene Garter LLP, at 616-235-5200 or pfoster@beenegarter.com.

UI Trust Fund Solvency 2000 - 2004

	2000	2001	2002	2003	2004
Benefits	800.8	1500.8	1804.6	1895.2	1781.6
Taxes	1000.1	962	994.4	1093.2	1308.9
Reserves	3000.06	2600.1	1837.1	1106.4	649.5
Debt	0	0	0	0	0



Data compiled from the Unemployment Insurance Agency Administrative Analysis & Federal Reporting

Chart prepared by the Employers' Unemployment Compensation Council